

**LAW OFFICES OF  
LOUIS E. GITOMER**

LOUIS E. GITOMER  
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May 29, 2009

THE ADAMS BUILDING, SUITE 301  
600 BALTIMORE AVENUE  
TOWSON, MARYLAND 21204-4022  
(202) 466-6532  
FAX (410) 332-0885

Honorable Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
Washington, DC 20423

RECORDATION NO. 27950 FILED

MAY 29 '09 -11 31 AM

Dear Acting Secretary Quinlan:

**SURFACE TRANSPORTATION BOARD**

I have enclosed for e-filing the document described below, to be recorded pursuant to §11301. This document is a Memorandum of Lease Agreement, a primary document dated May 28, 2009. Please give this primary document the next sequential Recordation No.

The names and addresses of the parties to the Memorandum of Lease Agreement are:

Lessor: Banc of America Leasing & Capital, LLC, 2059 Northlake Parkway, 4 South, Tucker, GA 30084.

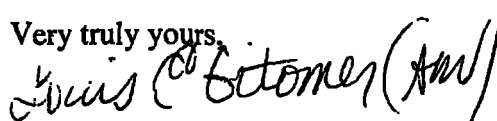
Lessee: DAK Americas LLC, 6324 Fairview Road, Charlotte, NC 28210.

A description of the equipment covered by the Memorandum of Lease Agreement follows: 171 covered hopper cars numbered DAKX 45001-45037, inclusive, 45039-45060, inclusive, 45062-45081, inclusive, 45083-45093, inclusive, 45095-45146, inclusive, and 45148-45176, inclusive; and 14 tank cars numbered DAKX 29902, 29911-29923, inclusive.

A fee of \$41.00 is enclosed. Please return a copy by email to Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204, Lou\_Gitomer@verizon.net.

A short summary of the document to appear in the index follows: a Memorandum of Lease Agreement between Banc of America Leasing & Capital, LLC, 2059 Northlake Parkway, 4 South, Tucker, GA 30084, and DAK Americas LLC, 6324 Fairview Road, Charlotte, NC 28210, covering 171 covered hopper cars numbered DAKX 45001-45037, inclusive, 45039-45060, inclusive, 45062-45081, inclusive, 45083-45093, inclusive, 45095-45146, inclusive, and 45148-45176, inclusive; and 14 tank cars numbered DAKX 29902, 29911-29923, inclusive.

Very truly yours,



Louis E. Gitomer

RECORDATION NO. 27950 FILED

MAY 29 '09 -11 31 AM

SURFACE TRANSPORTATION BOARD

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MEMORANDUM OF LEASE AGREEMENT

dated as of May 28, 2009

between

DAK AMERICAS LLC,  
as Lessee

and

BANC OF AMERICA LEASING & CAPITAL, LLC  
as Lessor

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FILED WITH THE SURFACE TRANSPORTATION BOARD PURSUANT TO 49 U.S.C.  
§11301

on May \_\_\_\_, 2009 at \_\_\_\_:\_\_\_\_.m.

## MEMORANDUM OF LEASE AGREEMENT

THIS MEMORANDUM OF LEASE AGREEMENT is made and entered into as of May \_\_, 2009, by and between DAK AMERICAS LLC ("Lessee") and BANC OF AMERICA LEASING & CAPITAL, LLC ("Lessor"), with reference to the following:

1. Lessor has agreed to purchase and lease to Lessee, and Lessee has agreed to lease from Lessor, those certain railcars described on Exhibit No. 1 attached hereto (the "Railcars").

All of such railcars are more fully described in that certain Rail Equipment Net Leasing Agreement dated as of May 28, 2009, and Schedule No. \_\_\_\_\_ thereto and incorporating the terms thereof, dated as of May 28, 2009 (together with all of the riders, schedules and other attachments thereto, collectively, the "Lease"), each between Lessor and Lessee.

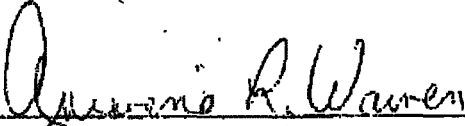
2. The Lease shall be effective as of the date hereof and shall be subject to the term specified in the Lease, and any extension of such term to the extent provided for in the Lease.
3. The Lease contains an option by Lessee to purchase the Railcars on the terms set forth in the Lease.

This Memorandum of Lease Agreement may be executed in any number of counterparts, each executed counterpart constituting an original but all together only one Memorandum of Lease Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed or caused this Memorandum of Lease Agreement to be executed as of the date first above written.

BANC OF AMERICA LEASING & CAPITAL, LLC

By:   
Name: Amanda L. Warren  
Title: Vice President

DAK AMERICAS LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have executed or caused this Memorandum of Lease Agreement to be executed as of the date first above written.

BANC OF AMERICA LEASING & CAPITAL, LLC

By: \_\_\_\_\_  
Name:  
Title:

DAK AMERICAS LLC

By: \_\_\_\_\_  
Name: *Jose Young*  
Title: *Attorney-in-Fact*

By: \_\_\_\_\_  
Name: *Juan Pablo Lorenzo*  
Title: *Attorney-in-Fact*

STATE OF Massachusetts )  
 ) ss.  
COUNTY OF Suffolk )

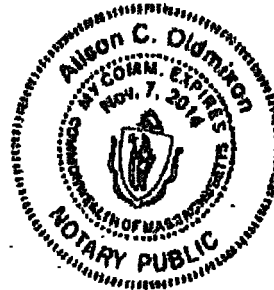
I HEREBY CERTIFY, that on this \_\_\_\_ day of May, 2009, before me, the undersigned, a Notary Public of the State of Massachusetts, personally appeared Annemarie L. Warren, who acknowledged himself to be the Vice-President of BANC OF AMERICA LEASING & CAPITAL, LLC., known (or satisfactorily proven), to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained as the duly authorized Vice-President of said company by signing the name of the company by himself as the Vice-President.

AS WITNESS my hand and notarial seal.

Alison C. Oldmixon

Notary Public

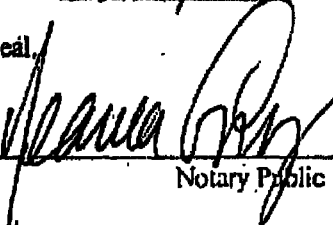
My commission expires: 11/7/2014



STATE OF North Carolina )  
 ) ss.  
COUNTY OF Mecklenburg )

I HEREBY CERTIFY, that on this 22 day of May, 2009, before me, the undersigned, a Notary Public of the State of North Carolina, personally appeared Jorge Young, who acknowledged himself to be the Attorney in Fact of DAK AMERICAS LLC, known (or satisfactorily proven), to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained as the duly authorized Attorney in Fact of said company by signing the name of the company by himself as the Attorney in Fact.

AS WITNESS my hand and notarial seal.

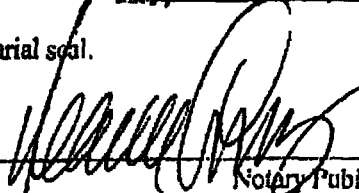
  
\_\_\_\_\_  
Notary Public

My commission expires: 09/30/2013.

STATE OF North Carolina )  
 ) ss.  
COUNTY OF Mecklenburg )

I HEREBY CERTIFY, that on this 22 day of May, 2009, before me, the undersigned, a Notary Public of the State of North Carolina, personally appeared Juan Pablo Lozano, who acknowledged himself to be the Attorney in Fact of DAK AMERICAS LLC, known (or satisfactorily proven), to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained as the duly authorized Attorney in Fact of said company by signing the name of the company by himself as the Attorney in Fact.

AS WITNESS my hand and notarial seal.

  
\_\_\_\_\_  
Notary Public

My commission expires: 09/30/2013.

**EXHIBIT NO. 1 TO MEMORANDUM OF LEASE AGREEMENT  
DESCRIPTION OF RAILCARS**

171 covered hopper cars numbered DAKX 45001-45037, inclusive, 45039-45060, inclusive, 45062-45081, inclusive, 45083-45093, inclusive, 45095-45146, inclusive, and 45148-45176, inclusive; and 14 tank cars numbered DAKX 29902, 29911-29923, inclusive.